

**REMARKS**

The Final Office Action dated October 23, 2003, has been received and reviewed.

Claims 1-23 and 40-54 are currently pending and under consideration in the above-referenced application. Of these, claims 3, 5, 19, 21, 42, and 51 have been withdrawn from consideration as being drawn to non-elected species of invention.

Claims 1, 2, 6-11, 13, 17, 18, 20, 22, 49, 50, 52, and 54 stand rejected. It has been indicated that each of claims 4, 12, 14-16, and 23, recites allowable subject matter. Claims 40-48 have been allowed.

**Rejections Under 35 U.S.C. § 102**

Claims 1, 2, 6, 7, 11, 13, 17, 18, 20, 22, 49, 50, 52, and 54 stand rejected under 35 U.S.C. § 102.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, the identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Additionally, the elements must be arranged as required by the claim, but identity of the terminology is not required. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Walker

Claims 1, 2, 6, 7, 11, 13, 17, 18, and 22 stand rejected under 35 U.S.C. § 102(a) for reciting subject matter which is purportedly anticipated by the disclosure of U.S. Patent 6,273,800 to Walker et al. (hereinafter "Walker").

Walker describes a variety of polishing systems. The polishing system shown in FIG. 7 of Walker includes a polishing pad 440, a support pad 450, a platen 420 beneath the support pad 450, and a pair of rollers 451a, 451b for moving the platen 420 and, thus, the support pad 450. The platen includes a plurality of sections that are linked in a continuous loop. Col. 8, line 63, to col. 9, line 5. The support pad 450, which is also configured as a continuous loop,

may include a plurality of linked sections or a single member. *See also* col. 8, line 59, to col. 9, line 35. The support pad 450 is configured to engage and disengage the polishing pad 440. Col. 9, lines 16-24. The support pad 450 may also be removed from the platen 420 without removing the platen from the rollers 451a, 451b. Col. 9, lines 29 & 30.

Independent claim 1, as proposed to be amended herein, recites an apparatus for polishing one or more layers of a semiconductor device structure which includes, among other things, “a substantially planar subpad located between [a] subpad support and [a] polishing pad . . . while supporting the polishing pad without being secured thereto.”

As the description of Walker is limited to support pads which are looped, Walker does not expressly or inherently describe, or anticipate, the claimed apparatus including the substantially planar subpad recited in amended independent claim 1. As such, it is respectfully submitted that, under 35 U.S.C. § 102, amended independent claim 1 recites subject matter which is allowable over that described in Walker.

Each of claims 2, 6, 7, 11, and 13 is allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

Independent claim 17, as proposed to be amended herein, recites a subpad support which includes a subpad retention element. The subpad retention element is configured to retain a substantially planar subpad.

Walker, by way of contrast, lacks any express or inherent description of a subpad retention element which is configured to retain a substantially planar subpad. Instead, Walker describes a platen 420 and rollers 451a, 451b that are configured to retain a support pad 450 having a looped configuration.

Therefore, Walker does not anticipate each and every element of amended independent claim 17, as is required to maintain a rejection under 35 U.S.C. § 102.

Claims 18 and 22 are both allowable, among other reasons, for depending directly from claim 17, which is allowable.

Vander Voort

Claims 17, 18, 20, 49, 50, 52, and 54 stand rejected under 35 U.S.C. § 102(e) for reciting subject matter which is assertedly described in U.S. Patent 6,224,474 to Vander Voort (hereinafter "Vander Voort").

Vander Voort describes a grinding or polishing apparatus, as well as an element for securing a grinding or polishing cloth to a rotatable platen of a grinding or polishing apparatus. The element, which is referred to in Vander Voort as a barrier element 80 (FIGs. 1-5), includes a lower portion 40 and an upper portion 50. The lower portion 40 is formed from a material that will be magnetically attracted and, thus, securable to a magnetic element 30 that is, in turn, configured to be secured to the surface of a rotatable platen 10. The upper portion 50 is formed from a material which prevents passage of a magnetic field emanated by the magnetic element 30 therethrough. The grinding or polishing cloth, which is also referred to in Vander Voort as a "grinding or polishing preparation element 70," is configured to be supported by an upper surface of the upper portion 50 of the barrier element, and may be secured thereto with a pressure-sensitive adhesive 65. Thus, the barrier element 80 of the apparatus described in Vander Voort is configured to be secured to the grinding or polishing preparation element 70.

Claim 17, as proposed to be amended herein, recites a subpad support for use in an apparatus for polishing one or more layers of a semiconductor device structure. The subpad support of amended independent claim 17 includes a subpad retention element for retaining a substantially planar subpad which is configured to support at least a portion of a polishing pad of the apparatus but not configured to be secured relative to the polishing pad.

In contrast, the description of Vander Voort is limited to an apparatus which includes a barrier element 80 which is configured to be secured to a platen 10 by way of a magnetic element 30 and which is configured to have a grinding or polishing preparation element 70 secured thereto. As the platen 10 of Vander Voort is configured to be secured to the barrier element 80, regardless of the lack of a positive recitation of a polishing pad in independent claim 17, Vander Voort lacks any express or inherent description of a "substantially planar subpad which is . . . not configured to be secured to the polishing pad."

Accordingly, it is respectfully submitted that Vander Voort does not anticipate each and every element of amended independent claim 17, as is required to maintain a rejection under 35 U.S.C. § 102(e).

Claims 18 and 20 are both allowable, among other reasons, as depending from claim 1, which is allowable.

Claim 20 is also allowable because Vander Voort does not expressly or inherently describe that the magnetic element 30 thereof is configured to apply a negative pressure to a bottom surface of the barrier element 80 thereof. If a negative pressure were applied by the magnetic element 30 in the manner that has been asserted (magnetic repulsion), the barrier element 80 of Vander Voort would be forced away from the rotatable platen 10, rather than secured thereto.

Independent claim 49, as proposed to be amended herein, recites a subpad support for use in an apparatus for polishing one or more layers of a semiconductor device structure. The subpad support includes a substantially planar support surface configured to receive a subpad and a subpad retention element associated with the support surface. The subpad retention element retains the subpad in position so as to support a polishing pad of the apparatus without being secured to the polishing pad.

In the apparatus described in Vander Voort, the magnetic element 30 is configured to retain a barrier element 80. The magnetic element 30 is configured to maintain the barrier element 80 in position while a grinding or polishing preparation element 70, (which the Office apparently believes to be analogous to a polishing pad) is secured to the barrier element 80. As the magnetic element 30 of Vander Voort is not configured to retain the barrier element 80 in such a way that the barrier element 80 supports the grinding or polishing preparation element 70 of the apparatus of Vander Voort but is not secured relative to the grinding or polishing preparation element 70, it is respectfully submitted that Vander Voort does not expressly or inherently describe, or anticipate, each and every element of amended independent claim 49.

It is, therefore, respectfully submitted that, under 35 U.S.C. § 102(e), amended independent claim 49 is allowable over Vander Voort.

Claims 50, 52, and 54 are each allowable, among other reasons, for depending from claim 49, which is allowable.

Claim 54 is additionally allowable because Vander Voort lacks any express or inherent description that the magnetic element 30 thereof is configured to apply a negative pressure to a bottom surface of the barrier element 80 thereof. Again, even if the repulsive forces of like magnetic poles were to be considered a negative pressure, such forces would force the barrier element 80 away from the rotatable platen 10 rather than secure these elements to each another.

**Rejections Under 35 U.S.C. § 103(a)**

Claims 8, 9, and 10 stand rejected under 35 U.S.C. § 103(a) for reciting subject matter which the Office asserts is unpatentable over that described in Walker.

Claims 8, 9, and 10 are each allowable, among other reasons, for depending indirectly from claim 1, which is allowable.

Additionally, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection that has been presented against claims 8, 9, and 10 is improper.

Notably, Walker does not qualify as 35 U.S.C. § 102(a) prior art against the above-referenced application, as Walker, which was filed on August 31, 1999, but did not issue until August 14, 2001, was not published before the August 31, 2000, filing date of the above-referenced application and the subject matter described therein was not otherwise made public before the August 31, 2002, filing date of the above-referenced application. *See* M.P.E.P. § 2132. Rather, Walker only qualifies as prior art to the above-referenced application under 35 U.S.C. § 102(e).

With respect to rejections under 35 U.S.C. § 103(a) that are based upon references which qualify as prior art under 35 U.S.C. § 102(e), 35 U.S.C. § 103(c) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

M.P.E.P. § 706.02(1)(3) explains that the evidentiary burden of the requirement that the subject matter and claimed invention be, “at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person” is met merely by a statement to that effect:

Applications and patents will be considered to be owned by, or subject to an obligation of assignment to, the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s).

*See also* M.P.E.P. § 706.02(1)(2)

Only in the rare instance that the examiner “may have independent evidence that raises a material doubt as to the accuracy of applicant’s representation of either (1) the common ownership or, or (2) the existence of an obligation to commonly assign, the application being examined and the applied U.S. patent or U.S. patent application publication reference” may the examiner “require objective evidence of common ownership of, or the existence of an obligation to assign, the application being examined application and the applied reference as of the date of invention of the application being examined.” M.P.E.P. § 706.02(1)(2).

M.P.E.P. § 706.02(1)(1) indicates that 35 U.S.C. 103(c) applies to all applications which have filing or priority dates of November 29, 1999, or later:

This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution applications filed under 37 CFR 1.53(d), and reissues.

As the above-referenced application was filed on or after November 29, 1999, the provisions of 35 U.S.C. § 103(c) apply.

The inventor of the subject matter described in the above-referenced application was under an obligation to assign his rights to such subject matter to Micron Technology, Inc., at the time he invented such subject matter. As evidence, the above-referenced application has been assigned to Micron Technology, Inc., which assignment has been recorded with the Office at

Reel No. 11069, Frame No. 0606. The subject matter described in Walker, as well as Walker itself, was already assigned to Micron Technology, Inc., as evidenced by the cover sheet of Walker.

For these reasons, 35 U.S.C. § 103(c) prevents use of Walker in a 35 U.S.C. § 103(a) rejection of the claims of the above-referenced application.

Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 8, 9, and 10 is respectfully requested.

#### **Allowable Subject Matter**

The allowance of claims 40-48 is noted with appreciation. The indication that claims 4, 12, 14-16, 23, and 53 recite allowable subject matter is also gratefully acknowledged. None of these claims has, however, been amended to independent form, as the claims from which they depend are believed to be separately allowable.

#### **Election of Species Requirement**

Claims 3, 5, 19, 21, 42, and 51 have been withdrawn from consideration as being drawn to non-elected species of invention. As independent claims 1, 17, 40, and 49 remain generic to all of the species of invention that have been identified by the Office, consideration and allowance of claims 3, 5, 19, 21, 42, and 51 is respectfully requested.

#### **ENTRY OF AMENDMENTS**

It is respectfully submitted that the claim amendments that are presented herein should be entered since they do not introduce new matter into the above-referenced application and they narrow the issues that remain for purposes of appeal by placing the claims of the above-referenced application in condition for allowance.

Further, the proposed amendments that replace the term "said" with "the" do not alter the scope of the claims including such amendments.

If it is determined that the proposed amendments do not place the claims in condition for allowance, or the proposed amendments are otherwise not entered, it is respectfully requested that the proposed amendments be entered when a Notice of Appeal is filed in the above-referenced application.

**CONCLUSION**

The allowance of claims 40-48 is again gratefully acknowledged. It is also respectfully submitted that each of claims 1-23 and 49-54 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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